

STATE OF MICHIGAN
COURT OF APPEALS

TERRY C. BUCHANAN and JACQUELINE E.
BUCHANAN,

UNPUBLISHED
February 11, 2014

Plaintiffs-Appellants,

v

HOUSEHOLD FINANCE CORP. III,

No. 311689
Wayne Circuit Court
LC No. 11-013634-CH

Defendant-Appellee.

Before: JANSEN, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

In this quiet title action, plaintiffs, Terry C. Buchanan and Jacqueline E. Buchanan, appeal as of right an order granting summary disposition in favor of defendant, Household Finance Corp. III. We affirm.

I. BASIC FACTS

Plaintiffs filed a quiet title action against defendant, claiming that their interest in property located at 20677 Huntington, Harper Woods, was superior to that of defendant. Defendant had obtained an interest in the property by sheriff's deed following a sheriff's sale on the foreclosed property. Plaintiffs filed a multi-count complaint; however, for purposes of this appeal, plaintiffs challenge only the granting of summary disposition as it relates to their claim that defendant failed to comply with the loan modification procedures set forth in MCL 600.3205a *et seq.* Plaintiffs argue that defendant's failure to comply with the loan modification provisions in Michigan's foreclosure by advertisement statute rendered the subsequent foreclosure void.

II. ANALYSIS

Plaintiffs argue that the trial court erred in granting defendant summary disposition because plaintiffs established a viable cause of action based on defendant's failure to comply with the statutory requirements for foreclosure by advertisement. We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiffs' claim for relief. MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial. [*Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).]

This Court also reviews de novo a matter of statutory interpretation. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). When construing a statute, we consider the statute's plain language and we enforce clear and unambiguous language as written. *In re Bradley Estate*, 494 Mich 367, 377; 835 NW2d 545 (2013).

Assuming, without deciding, that plaintiffs had standing to challenge the foreclosure after the expiration of the redemptive period, we nevertheless conclude that summary disposition was appropriately granted.

While plaintiffs argue that defendant violated the modification statute by failing to provide a "14-day letter" as required in MCL 600.3205b(1), and failing to provide the relevant calculations as required by MCL 600.3205c(5), there is nothing in the statutory language itself that *requires* a lender to grant a borrower a modification, even if the borrower meets the criteria set forth. In fact, MCL 600.3205c(6) specifically authorizes a mortgagee to pursue foreclosure even if the borrower is eligible for modification. Thus, even if this panel were to accept plaintiffs' allegations as true – that plaintiffs never received a letter advising them of the right to meet, that plaintiffs qualified for a modification, and that defendant failed to provide a copy of the calculations and the guidelines used in determining whether plaintiffs were qualified for a modification – plaintiffs' recourse can be found in MCL 600.3205c(8), which specifically provides:

If a mortgage holder or mortgage servicer begins foreclosure proceedings under this chapter in violation of this section, **the borrower may file an action in the circuit court for the county where the mortgaged property is situated to convert the foreclosure proceeding to a judicial foreclosure.** If a borrower files an action under this section and the court determines that the borrower participated in the process under section 3205b, a modification agreement was not reached, and the borrower is eligible for modification under subsection (1), and subsection (7) does not apply, the court shall **enjoin foreclosure of the mortgage by advertisement and order that the foreclosure proceed under chapter 31.** [Emphasis added.]

Therefore, in the face of a violation of MCL 600.3205b and c, plaintiffs' remedy was to seek an immediate injunction and convert the action from a foreclosure by advertisement to a judicial foreclosure. The statute provides borrowers no guarantee to a loan modification, even if the borrowers otherwise qualify. At most, the statute provides borrowers with the opportunity to seek judicial supervision of the foreclosure process.

Because the statute provided plaintiffs with their remedy, plaintiffs were forestalled from bringing the present action after the sheriff's sale had already taken place. "As a general rule, the remedies provided by statute for violation of a right having no common-law counterpart are exclusive, not cumulative." *Dudewicz v Norris-Schmid, Inc*, 443 Mich 68, 78; 503 NW2d 645 (1993) overruled in part on other grounds 478 Mich 589 (2007). There is no common law counterpart to the modification statute; the statutory provisions impose upon lenders and servicers new duties where no such duties previously existed, and grant borrowers new rights. As such, where plaintiffs' claims arise under the alleged statutory violations, plaintiffs' remedy is similarly found within the statute. Thus, to the extent plaintiffs' complaint alleged violations of the mortgage modification statute, the statute provided the exclusive remedy for its violation. Plaintiffs did not avail themselves of that remedy and may not challenge the modification process after the sheriff's sale was completed.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto